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K&N ENGINEERING, INC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION
13

14 K&N ENGINEERING, INC., a
15 California corporation,

16 Plaintiff,

17 vs.

18 LEEA CUSTOMS, INC., A Nevada
corporation; and EDWARD A. EHMER,
19 an individual,

20 Defendants.
21
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23
24

CASE NO.

COMPLAINT FOR:

1. **FEDERAL TRADEMARK INFRINGEMENT [15 U.S.C. § 1114(1)(a) and (b)];**
2. **FALSE DESIGNATION OF ORIGIN [15 U.S.C. § 1125(a);**
3. **FEDERAL UNFAIR COMPETITION;**
4. **COMMON LAW TRADEMARK INFRINGEMENT; AND**
5. **UNFAIR COMPETITION (CAL. BUS & PROF. CODE § 17200 ET SEQ.)**

DEMAND FOR JURY TRIAL

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1 Plaintiff K&N Engineering, Inc., a California corporation (“K&N” or
 2 “Plaintiff”) for its complaint against the above-named defendants Leea Customs,
 3 Inc., a Nevada corporation (“LCI”) and Edward A. Ehmer, an individual
 4 (“Ehmer”), (LCI and Ehmer are collectively referred to herein as “Defendants”)
 5 alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has original subject matter jurisdiction under 28 U.S.C. §
 8 1338(a) as this action arises under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a),
 9 and 1125(b) as well as under pendent jurisdiction under 28 U.S.C. § 1367.

10 2. This Court also has jurisdiction under 18 U.S.C. § 1332 because
 11 Plaintiff and Defendants are citizens of different states, and the matter in
 12 controversy exceeds \$75,000, exclusive of interests and costs.

13 3. Venue is proper in the Central District of California under 28 U.S.C.
 14 §§ 1391(a) and 1392(b) because a substantial part of the events, omissions and acts
 15 that are the subject matter of this action, and the resulting injury to Plaintiff,
 16 occurred within the Central District of California. This action arises out of
 17 Defendants’ trademark infringement as alleged below and the threatened and
 18 actual harm to Plaintiff by reasons thereof. Plaintiff is informed and believes, and
 19 thereon alleges, that Defendants conduct business in this Judicial District through
 20 their website and receive compensation therefrom by selling the infringing product
 21 as alleged below. Furthermore, by their actions alleged herein, Defendants have
 22 caused harm to Plaintiff at its headquarters in this Judicial District.

23 **THE PARTIES**

24 4. Plaintiff K&N is a corporation organized and existing under the laws
 25 of the State of California, having its principal place of business at 1455 Citrus
 26 Street, Riverside, California 92507.

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1 5. On information and belief, Defendant LCI is a corporation organized
2 and existing under the laws of the state of Nevada, having its principal place of
3 business at 2841 Josephine Drive, Henderson, Nevada 89044.

4 6. On information and belief, Defendant Ehmer is an individual residing
5 in Nevada. Plaintiff is further informed and believes that Ehmer is the sole owner,
6 officer and director of LCI.


7 **NATURE OF THE CASE**

8 7. Defendants are deceiving K&N's retail customers and the public at
9 large and causing customer confusion by incorporating K&N's products, which
10 prominently display K&N's trademarks, into a product sold and marketed by
11 Defendants in order to profit from the goodwill and reputation of K&N.
12 Defendants are further using K&N's trademarks on its website without
13 authorization for the purpose of unlawfully profiting from the goodwill and
14 reputation of K&N and K&N's trademarks, and additionally causing further
15 confusion regarding the origin of the infringing product. K&N seeks, where
16 appropriate, injunctive relief, statutory damages, an award of Defendants' profits,
17 attorney's fees, and costs against Defendants for trademark infringement under 15
18 U.S.C. § 1141(1)(a) and (b); false designation of origin and/or sponsorship under
19 15 U.S.C. § 1125(a); unfair and deceptive trade practices under California
20 Business and Professions Code § 17200 *et seq.*; and common law trademark and
21 trade name infringement and unfair competition.

22 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

23 8. K&N has been an innovative leader in performance air filter
24 technology since 1969. K&N designs, manufactures, and distributes automotive
25 and powersports aftermarket and industrial performance air filters, air intake kits,
26 oil filters and related products. K&N's products are widely sold to automotive and
27 powersport enthusiasts and to commercial customers throughout the United States
28 and the world.

1 9. K&N holds United States Trademark Registrations and foreign
2 trademark registrations for its marks used in connection with its numerous
3 products.

4 10. K&N is the owner of the stylized  mark, U.S. service mark
5 registration Nos. 1,536,024; 2,581,371 and 3,692,417 (hereinafter collectively
6 “K&N Mark”), used in connection with the advertising, marketing and sales of its
7 numerous air filters and oil filter products. Copies of these registrations are
8 attached hereto as Exhibits A, B and C, respectively.

9 11. K&N has been manufacturing and selling air filter products under its
10 K&N marks for more than 40 years and oil filter products for over 13 years. K&N,
11 by virtue of its products offered under the K&N marks, is recognized as a premier,
12 and one of the most successful, manufacturers and distributors of aftermarket
13 performance air filters on the market today, as well as premium oil filters.

14 12. K&N’s products, including the K&N crankcase vent filter (“K&N
15 Product”), prominently display the K&N Mark. A photograph of a K&N Product
16 is attached hereto as Exhibit D. The K&N Product is not designed for specific
17 engines or vehicle models, but is intended for general application with certain
18 types of engines or motor vehicles. The K&N Product is not manufactured for use
19 as or with an engine oil filler cap, nor to defeat the purpose or function of an OEM
20 (“original equipment manufacturer”) oil filler cap on emissions-controlled
21 vehicles, such as Corvettes with highly modified engines.

22 13. On information and belief, Defendants have created an aftermarket
23 automotive part that incorporates the K&N Product to create a modified oil filler
24 cap, or “breather,” for certain models of Corvette automobiles. Defendants
25 permanently affix the K&N Product to one or more other components and sell
26 these unified parts as a single part they call a “breather” (the “Infringing Product”).
27 The Infringing Product is sold as a new product and bears no indication that it is a
28 composite of two or more parts, including the K&N Product, assembled and

1 permanently joined together by Defendants. The K&N Mark is prominently
2 displayed on the Infringing Product and is the only source identifier. The K&N
3 Mark was also prominently displayed on Defendants' website
4 www.nakidparts.com, without authorization from K&N. Such references have
5 since been removed from Defendants' website after K&N sent a series of written
6 correspondence to Defendants demanding that Defendants cease and desist using
7 K&N's intellectual property. However, Defendants still display the mark on one
8 or more internet blogs or forums promoting the Infringing Product.

9 14. The K&N Mark is the only identifying mark on the Infringing
10 Product. While Defendants have recently removed reference to K&N from their
11 website, the Infringing Product itself has one, and only one, distinguishing or
12 identifying mark—the K&N Mark. There is no disclaimer or other warning
13 affixed to or displayed anywhere on the Infringing Product indicating that the
14 K&N Product has been modified or otherwise altered for use in Corvettes or with
15 Corvette engines. Nonetheless, Defendants' modifications have substantially
16 altered the K&N Product so that it may be used in Corvettes or on Corvette engines
17 without the authorization or consent of K&N.

18 15. Defendants are not simply reselling the K&N Product. Defendants
19 have substantially altered the K&N Product and changed its use and application
20 and claim that the Infringing Product is covered by K&N's warranty, the terms of
21 which Defendants misstate. Despite Defendants' alterations, the Infringing
22 Product prominently displays the K&N Mark. The public is therefore likely to be
23 misled that Defendants' Infringing Product is manufactured wholly by K&N and
24 that the quality of the product is that which the consumer has come to expect from
25 K&N over the last four decades.

26 16. Defendants' conduct as set forth above is misleading to its customers
27 and the public at large. Nowhere on the Infringing Product or its packaging is it
28 clearly stated that the Infringing Product has been altered without the authorization

1 of K&N, or that K&N is not responsible for the product or its lack of conformity to
2 the original standards of the K&N Product. In the event that the Infringing Product
3 malfunctions or otherwise fails to conform to statutory mandates or industry
4 standards, the public is likely to look to K&N for relief, rather than Defendants,
5 since the only identifying mark on the Infringing Product is the K&N Mark.
6 Defendants are using K&N's goodwill for the sale of the Infringing Product
7 without authorization while simultaneously causing confusion as to the source of
8 the Infringing Product.

9 17. The Infringing Product, as modified by Defendants, is also advertised
10 and sold on other websites, including, but not limited to, www.corvetteforum.com,
11 and advertised therein as a "K&N vented oil breather cap" offered specifically for
12 Corvettes. The K&N Product as manufactured and distributed by K&N is not
13 manufactured for specific use in Corvettes. As set forth above, Defendants have
14 substantially modified the K&N Product for use in Corvettes, without authorization
15 and without informing the public of such alteration. Defendants are utilizing the
16 K&N Mark to mislead the public that the Infringing Product advertised and sold
17 through these websites was manufactured by K&N with the same quality and
18 precision that has become synonymous with the K&N brand without adequate
19 notice to the public of the unauthorized modifications and alterations to the
20 original K&N product.

21 18. Defendants are not affiliated with K&N and are not authorized to use
22 the K&N Mark in connection with the Infringing Product or their website.

23 19. K&N is informed and believes that through Defendants unauthorized
24 use of K&N's products and marks they are intentionally creating the appearance of
25 an affiliation, association, sponsorship or relationship between K&N's vent filters
26 and Defendants' Infringing Product.

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1 20. Defendants have failed and refused to cease and desist from their
2 improper use of the K&N Mark despite repeated demands by K&N to Defendants.
3 On September 11, 2014, K&N sent Defendants written correspondence demanding
4 that Defendants cease and desist from, among other things, selling the Infringing
5 Product (the "September 11 Letter"). A true and correct copy of the September 11
6 Letter is attached hereto as Exhibit E and incorporated herein by this reference.

7 21. After receiving the September 11 Letter, Defendants and K&N
8 engaged in a series of written communication exchanges wherein K&N reiterated
9 its demand and continued to advise Defendants to stop using, selling or advertising
10 the K&N Product. Defendants responded by stating that Defendants "WILL JUST
11 STOP SELLING YOUR PRODUCT JERK." After several more written
12 communication exchanges, the Infringing Product was still being sold by
13 Defendants despite K&N's repeated and continued demands that Defendants cease
14 and desist from selling the Infringing Products.

15 22. On November 20, 2014, K&N sent Defendants written
16 correspondence informing them that unless Defendants complied with the demands
17 of the September 11 Letter, including ceasing the selling of the Infringing Product,
18 K&N would have no choice but to initiate a civil action. A true and correct copy
19 of the November 20, 2014 correspondence is attached hereto as Exhibit F and
20 incorporated herein by this reference.

21 23. K&N is informed and believes that despite these repeated written
22 demands, Defendants continue to sell the Infringing Product, which Infringing
23 Product is now listed as a "LS3 / LS2 / LS1 Breather." Defendants conduct as
24 alleged herein displays a conscious and deliberate disregard for K&N's rights such
25 as to constitute malice and oppression.

26 24. The U.S. courts and this Court in particular have a substantial interest
27 in preventing Defendants' infringement as set forth above. Accordingly,
28 Defendants' acts and omissions complained of herein had, and continue to have, a

1 significant effect on U.S. commerce and are subject to the reach of, among other
 2 statutes and common law, the Lanham Act and the Uniform Unfair and Deceptive
 3 Trade Practices Act, California Business & Professions Code § 17000.

4 25. By reason of Defendants' acts as set forth above, K&N has suffered,
 5 and will continue to suffer, damage to its business, reputation, and goodwill.
 6 Unless restrained and enjoined, Defendants will continue to engage in the acts
 7 complained of herein, which acts have caused and will continue to cause
 8 irreparable damage to K&N. K&N's remedy at law is not adequate to compensate
 9 K&N for all the resulting injuries arising from the acts and omissions alleged
 10 herein.

11 **FIRST CLAIM FOR RELIEF**
 12 **(Infringement of Registered Trademark)**
(15 U.S.C. § 1114 / Lanham Act § 32)

13 26. K&N repleads, realleges, and incorporates herein by reference the
 14 allegations in the above paragraphs 1 through 25 as though fully set forth at length
 15 herein.

16 27. K&N has continuously used the K&N Mark in interstate and/or
 17 foreign commerce since registration of said marks.

18 28. K&N, as the owner of all right, title, and interest in and to the K&N
 19 Mark, has standing to maintain an action for trademark infringement under the
 20 Trademark Statute 15 U.S.C. § 1114.

21 29. On information and belief, Defendants, at all times relevant, were
 22 aware that K&N owned and continues to own the K&N Mark, and that K&N was
 23 and continues to be the registered owner of the K&N Mark.

24 30. Defendants failed to obtain the consent and authorization of K&N as
 25 the registered owner of the K&N Marks as required to act as a dealer of and/or to
 26 be authorized to commercially distribute, promote, market, and/or offer for sale the
 27 Infringing Product bearing the K&N Mark in the stream of commerce.

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1 31. On information and belief, Defendants intentionally and knowingly
2 infringed upon the K&N Marks (i) by selling products that infringe the K&N
3 Mark; (ii) by engaging in the promotion, marketing, presentation, distribution
4 and/or sale of the Infringing Product bearing and/or sold in connection with the
5 K&N Mark; and (iii) by making reference to K&N, its reputation and the K&N
6 Product in Defendants' statements to sell, promote, advertise and market the
7 Infringing Product.

8 32. On information and belief, Defendants' egregious and intentional use
9 of the K&N Mark to build and gain prestige for Defendants' own name and brand
10 has caused actual confusion and is likely to continue to cause further confusion,
11 and/or to cause mistake, and/or to deceive, mislead, and/or defraud consumers or
12 potential consumers who believe the Infringing Product is an authentic K&N
13 product and/or is a product that is approved, endorsed, authorized or sponsored by
14 K&N.

15 33. On information and belief, the use of the K&N Mark by Defendants is
16 a counterfeit mark within the meaning of Section 34(d)(1)(B) of the Lanham Act,
17 15 U.S.C. § 1116(d)(1)(B).

18 34. On information and belief, Defendants have committed the acts
19 complained of above and have continued to do so in defiance of K&N's repeated
20 requests that they cease and desist from such conduct.

21 35. Defendants' continued and knowing use of the K&N Mark without
22 K&N's consent or authorization constitutes intentional infringement of K&N's
23 federally registered marks in violation of § 32 of the Lanham Act, 15 U.S.C. §
24 1114, or the willful use of a counterfeit mark in violation of §35 of the Lanham
25 Act, 15 U.S.C., §1117(c). Defendants' acts and willful conduct have caused and,
26 unless restrained and enjoined by this Court, will continue to cause irreparable
27 harm, financial injury and other damages to K&N, such that damages alone do not
28 provide K&N with an adequate remedy at law. Based upon such conduct, K&N is

1 entitled to injunctive relief as well as monetary damages, statutory damages, and
 2 other remedies provided by 15 U.S.C. §§ 1116, 1117 and 1118, including
 3 disgorgement of Defendants profits, treble damages, reasonable attorneys' fees,
 4 costs and prejudgment interest.

5 **SECOND CLAIM FOR RELIEF**
 6 **(Trademark Dilution)**
 7 **(15 U.S.C. § 1125(c) / Lanham Act § 43)**

8 36. K&N repleads, realleges, and incorporates herein by reference the
 9 allegations in paragraphs 1 through 35 as though fully set forth at length herein.

10 37. The K&N Mark is famous pursuant to 15 U.S.C. § 1125(c) and
 11 became famous prior to the filing of this Complaint and prior to the
 12 commencement of the activities attributed to Defendants in this Complaint.

13 38. Defendants' activities as alleged in this Complaint dilute, both by
 14 blurring and tarnishment, the distinctive quality of the K&N Mark in violation of
 15 15 U.S.C. § 1125(c). Defendants' activities were and continue to be willful
 16 pursuant to 15 U.S.C. § 1125(c)(5)(B).

17 39. Based upon such conduct, K&N is entitled to Defendants' profits
 18 pursuant to 15 U.S.C. § 1117(a)(3), as well as all costs and reasonable attorneys'
 19 fees incurred in bringing this action.

20 40. Defendants' infringing activities as described in this Complaint have
 21 caused and continue to cause irreparable injury and harm and other damages to
 22 K&N and its business, reputation, and the goodwill it has realized in its federally
 23 registered marks.

24 41. Unless enjoined by the Court, Defendants' infringing activities will
 25 continue to dilute the K&N Mark and cause K&N irreparable financial injury and
 26 other damage to K&N and its business, name, reputation and goodwill in its marks.

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THIRD CLAIM FOR RELIEF
(Unfair Competition in Violation of Federal Law)
(15 U.S.C. § 1125(a))

42. K&N repleads, realleges, and incorporates herein by reference the allegations in paragraphs 1 through 41 as though fully set forth at length herein.

43. As set forth above, Defendants are using the K&N Mark in connection with the advertising, marketing and sale of the Infringing Product.

44. The advertising, promotion, offering for sale, and sale of unauthorized K&N products bearing the K&N Mark and/or sold in connection with the K&N Mark, constitutes false designation of origin and false descriptions and representations, and such conduct is likely to cause confusion and mistake, and to deceive consumers and the public at large by creating the false impression that K&N is affiliated, connected, or associated with the activities and products of Defendants and/or that Defendants' products are approved, licensed, endorsed or sponsored by K&N.

45. On information and belief, with full knowledge of such falsity, Defendants have promoted, sold, and continue to sell such merchandise among the public and continue to deceive the public, resulting in profits for Defendants while causing K&N great damage and injury.

46. By their acts alleged herein, Defendants have falsely designated and represented goods used in commerce in violation of 15 U.S.C. § 1125(a) and, on information and belief, have used the goodwill of K&N to sell Defendants' products without authorization or consent.

47. On information and belief, Defendants are now committing the acts complained of above and have continued to do so in defiance of K&N's request that they cease such acts.

48. Defendants, after due notice, have displayed a willful course of conduct toward appropriation and destruction of Plaintiff's rights in and to the K&N Mark.

1 49. On information and belief, Defendants' wrongful acts and conduct as
2 alleged herein have permitted or will permit them to generate profits through sales
3 of the Infringing Product on the strength of K&N's substantial advertising, sales,
4 consumer recognition, and good will in connection with the K&N Mark.

5 50. As a result of Defendants' wrongful acts alleged herein, K&N has
6 suffered and will continue to suffer monetary damage in an amount not thus far
7 determined, but in an amount in excess of this Court's minimum jurisdiction.

8 51. On information and belief, Defendants' acts of unfair competition by
9 false designation of origin in violation of the Lanham Act have caused financial
10 injury and damages to Plaintiff and have been willful, making this an exceptional
11 case within the meaning of the Lanham Act, 15 U.S.C. § 1117, thereby entitling
12 Plaintiff to its attorneys' fees and costs.

13 52. The above-described conduct by Defendants constitutes unfair
14 competition that has caused and, unless restrained and enjoined by this Court, will
15 continue to cause irreparable harm to K&N and the K&N brand, for which there is
16 no adequate remedy at law.

17 **FOURTH CLAIM FOR RELIEF**
18 **(California Common Law Trademark Infringement)**

19 53. K&N repleads, realleges, and incorporates herein by reference the
20 allegations in paragraphs 1 through 52 as though fully set forth at length herein.

21 54. The aforementioned acts of Defendants constitute trademark
22 infringement in violation of the common law of the State of California, causing
23 substantial harm and irreparable injury to K&N for which there is no adequate
24 remedy at law.

25 **FIFTH CLAIM FOR RELIEF**
26 **(California Unfair Competition)**

27 55. K&N repleads, realleges, and incorporates herein by reference the
28 allegations in paragraphs 1 through 54 as though fully set forth at length herein.

1 56. As stated above, the conduct of Defendants is likely to cause
2 confusion as to the origin, authorization, authenticity and sponsorship of the
3 Infringing Product advertised, distributed, offered for sale, and sold by Defendants
4 bearing the K&N Mark. The above-described conduct of Defendants is intended to
5 produce and likely has produced substantial profits for Defendants at the expense
6 of K&N and to the detriment of the integrity of the K&N brand.

7 57. The acts and practices of Defendants as alleged herein violate the
8 California Uniform Unfair and Deceptive Trade Practices Act, California Business
9 & Professions Code § 17000 *et seq.*, because (a) the actions and conduct of
10 Defendants cause a likelihood of consumer confusion or misunderstanding as to
11 the source, sponsorship, approval, or certification of products; (b) the actions and
12 conduct of Defendants cause a likelihood of consumer confusion or
13 misunderstanding as to the affiliation, connection, or association with or
14 certification by another; and (c) the actions and conduct of Defendants create other
15 likelihood of consumer confusion or misunderstanding.

16 58. As a result, K&N has incurred damages including loss of market
17 share, injury to business reputation, loss of control over its brand and image, and
18 lost sales and royalties.

19 59. K&N has lost money and suffered substantial injury as a result of the
20 wrongful acts of Defendants in this district. The misconduct also has caused, and
21 continues to cause, irreparable injury to K&N for which there is no adequate
22 remedy at law. K&N therefore seeks an injunction and restitution.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, K&N prays that:

25 A. Defendants and its officers, directors, agents, employees,
26 representatives, and all persons, firms, and corporations in active concert with any
27 of them, be preliminarily and permanently enjoined from infringing, diluting, or
28 otherwise using without K&N's authorization the K&N Mark, including without

1 limitation, importing, purchasing, distributing, offering for sale or selling any
2 unauthorized infringing merchandize bearing, using, or incorporating the K&N
3 Mark or any confusingly similar marks;

4 B. Defendants be required to deliver immediately to K&N all inventory
5 of K&N Product and all infringing merchandise bearing, using or incorporating the
6 K&N Mark, or any confusingly similar mark;

7 C. Defendants be ordered, pursuant to Section 34 of the Lanham Act, 15
8 U.S.C. § 1116(a), to file with the Court and serve upon K&N's counsel, within 30
9 days of the entry of this injunction and order prayed for herein, a written report
10 setting forth under oath and in detail the manner in which it has complied with the
11 injunctions and orders requested herein;

12 D. Defendants provide an accounting of all revenues and profits obtained
13 by it as a result of its trademark infringement, unfair competition and other
14 violations, as alleged herein, and that the amount of profits realized by Defendants
15 by its unlawful acts be awarded to K&N;

16 E. K&N be awarded restitution, including disgorgement of all monies
17 obtained by Defendants through the unlawful sales, distribution and use of
18 unauthorized or infringing merchandise bearing the K&N Mark, or any
19 confusingly similar mark, such that K&N be awarded Defendants' profits in an
20 amount not yet ascertained but in excess of this Court's jurisdictional amount;

21 F. K&N be awarded an amount three times Defendants' profits in light
22 of the intentional and willful nature of Defendants' acts, pursuant to 15 U.S.C.
23 §1117;

24 G. K&N be awarded damages in the full amount sustained by it as a
25 result of Defendants' acts;

26 H. K&N be awarded statutory damages and attorneys' fees pursuant to
27 15 U.S.C. §1117;

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1 I. In the alternative, as may be elected by K&N pursuant to 15 U.S.C. §
2 1117(c), statutory damages of \$2 million for Defendants' willful counterfeiting of
3 a registered trademark, or, if found not to be willful infringement, \$200,000;

4 J. For any monetary award to include pre and post-judgment interest at
5 the highest rate allowed by law; and

6 K. Such other further relief as the Court deems just and proper.

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8 Dated: March 12, 2015

GORDON & REES LLP

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10 By: 

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Evan M. Rothman
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Attorney for Plaintiff
K&N ENGINEERING, INC.

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15 **DEMAND FOR JURY TRIAL**

16 PLEASE TAKE NOTICE that Plaintiff K&N ENGINEERING, INC. hereby
17 demands a trial by jury in this action.

18
19 DATED: March 12, 2015

GORDON & REES LLP

20
21 By: 

Tara L. Martin
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